

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY MARCH 25, 2014

AMENDED IN ASSEMBLY MARCH 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1554

Introduced by Assembly Member Skinner
(Principal coauthor: Assembly Member Rodriguez)
(Coauthors: Assembly Members Atkins and Eggman)
(Coauthors: Senators Block and Corbett)

January 27, 2014

An act to amend ~~Sections 1569.35 and~~ *Section 1569.37* of, *and to amend, repeal, and add Section 1569.35 of*, the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1554, as amended, Skinner. Residential care facilities for the elderly.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure of residential care facilities for the elderly by the State Department of Social Services and makes a violation of those provisions a crime. Existing law authorizes a person to request an inspection of a facility by transmitting notice of an alleged violation of law to the department. Existing law requires the department to review a complaint and conduct an onsite inspection within 10 days and requires the department to provide the substance of the complaint to the licensee no earlier than the time of the inspection.

This bill, *beginning July 1, 2015*, would make various changes to this complaint procedure, including prohibiting the department from giving a licensee advance notice of an investigation regarding a complaint and requiring the department to conduct an onsite investigation within ~~24 hours~~ *one working day* of receiving a complaint if the complaint alleges ~~abuse, neglect, physical abuse, sexual abuse,~~ or a threat of imminent danger. The bill would ~~require~~ *state the intent of the Legislature that* the department ~~to~~ conduct investigations in the manner required to ensure maximum effectiveness while respecting the rights of residents and to complete an investigation, except as specified, within 90 days of receiving a complaint, or within 30 days ~~where~~ *when* the complaint alleges ~~abuse, neglect, physical abuse, sexual abuse,~~ or a threat of imminent danger. The bill would prohibit a licensee, or officer or employee of the licensee, from interfering with or obstructing an investigation conducted pursuant to these provisions and would require the department to assess an immediate civil penalty of \$1,000 per day per violation for violations of that prohibition. Because a violation of this prohibition would also be a crime, the bill would impose a state-mandated local program. The bill would authorize a complainant who is dissatisfied with the department's investigation, findings, or enforcement to file an appeal, as specified, and would require the department to inform the complainant of these appeal rights, as specified.

Existing law prohibits a licensee from discriminating or retaliating in any manner against a person receiving the services of the licensee's residential care facility for the elderly, or against an employee of the licensee's facility, on the basis, or for the reason that, the person or employee or any other person has initiated or participated in the filing of a complaint, grievance, or a request for inspection with the department, or has initiated or participated in the filing of a complaint, grievance, or request for investigation with the appropriate local ombudsman, or with the state ombudsman.

This bill would require the department to ~~ensure that a licensee complies with that provision.~~ *assess an immediate \$1,000 per day civil penalty for each violation of these provisions.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1569.35 of the Health and Safety Code*
2 *is amended to read:*

3 1569.35. (a) Any person may request an inspection of any
4 residential care facility for the elderly in accordance with this
5 chapter by transmitting to the department notice of an alleged
6 violation of applicable requirements prescribed by statutes or
7 regulations of this state, including, but not limited to, a denial of
8 access of any person authorized to enter the facility pursuant to
9 Section 9722 of the Welfare and Institutions Code. A complaint
10 may be made either orally or in writing.

11 (b) The substance of the complaint shall be provided to the
12 licensee no earlier than at the time of the inspection. Unless the
13 complainant specifically requests otherwise, neither the substance
14 of the complaint provided the licensee nor any copy of the
15 complaint or any record published, released, or otherwise made
16 available to the licensee shall disclose the name of any person
17 mentioned in the complaint except the name of any duly authorized
18 officer, employee, or agent of the department conducting the
19 investigation or inspection pursuant to this chapter.

20 (c) Upon receipt of a complaint, other than a complaint alleging
21 denial of a statutory right of access to a residential care facility for
22 the elderly, the department shall make a preliminary review and,
23 unless the department determines that the complaint is willfully
24 intended to harass a licensee or is without any reasonable basis, it
25 shall make an onsite inspection within 10 days after receiving the
26 complaint except where the visit would adversely affect the
27 licensing investigation or the investigation of other agencies,
28 including, but not limited to, law enforcement agencies. In either
29 event, the complainant shall be promptly informed of the
30 department's proposed course of action.

31 (d) Upon receipt of a complaint alleging denial of a statutory
32 right of access to a residential facility for the elderly, the
33 department shall review the complaint. The complainant shall be
34 notified promptly of the department's proposed course of action.

1 (e) *This section shall become inoperative on July 1, 2015, and,*
2 *as of January 1, 2016, is repealed, unless a later enacted statute,*
3 *that becomes operative on or before January 1, 2016, deletes or*
4 *extends the dates on which it becomes inoperative and is repealed.*

5 SEC. 2. *Section 1569.35 is added to the Health and Safety*
6 *Code, to read:*

7 1569.35. (a) *A person may request an investigation of a*
8 *residential care facility for the elderly in accordance with this*
9 *chapter by making a complaint to the department alleging a*
10 *violation of applicable requirements prescribed by statutes or*
11 *regulations of this state. A complaint may be made either orally,*
12 *in writing, or electronically.*

13 (b) (1) *Upon receipt of a complaint, the department shall make*
14 *a preliminary review. Within two working days of receiving the*
15 *complaint, the department shall notify the complainant of the name*
16 *of the officer, employee, or agent of the department who will*
17 *conduct the investigation. Unless the department determines that*
18 *the complaint is willfully intended to harass a licensee or is without*
19 *any reasonable basis, it shall make an onsite investigation within*
20 *10 days after receiving the complaint.*

21 (2) *Notwithstanding paragraph (1), if a complaint alleges*
22 *physical abuse, sexual abuse, or a threat of imminent danger of*
23 *death or serious harm, the department shall conduct an onsite*
24 *investigation within one working day of the receipt of the*
25 *complaint.*

26 (3) *Notwithstanding paragraph (1), if a local long-term care*
27 *ombudsman or the State Long-Term Care Ombudsman files a*
28 *complaint alleging denial of a statutory right of access to a*
29 *residential care facility for the elderly under Section 9722 of the*
30 *Welfare and Institutions Code, the department shall give priority*
31 *to the complaint, as required pursuant to Section 9721 of the*
32 *Welfare and Institutions Code, and contact the Office of the State*
33 *Long-Term Care Ombudsman in the investigation.*

34 (4) *Prior to conducting an onsite investigation pursuant to this*
35 *section, the department shall make a good faith effort, documented*
36 *in writing, to contact and interview the complainant and inform*
37 *the complainant of the department's proposed course of action*
38 *and the relevant deadline for the department to complete its*
39 *investigation. To the extent practicable, the officer, employee, or*
40 *agent of the department who will conduct the investigation will be*

1 *the representative who interviews and makes contact with the*
2 *complainant.*

3 *(c) When conducting an investigation pursuant to this section,*
4 *the department shall consult with and, to the extent practicable,*
5 *coordinate its investigation of a residential care facility for the*
6 *elderly with the investigation of the facility by other agencies,*
7 *including, but not limited to, the Office of the State Long-Term*
8 *Care Ombudsman and law enforcement agencies. Nothing in this*
9 *subdivision shall be construed to limit the department's ability to*
10 *temporarily suspend an investigation if requested to do so by a*
11 *law enforcement agency because the investigation would adversely*
12 *affect an active criminal investigation. The department shall*
13 *maintain written documentation of the law enforcement request*
14 *and continue to ensure the safety of all residents. The department*
15 *shall immediately resume any investigation that is suspended*
16 *pursuant to this subdivision upon consent of law enforcement or*
17 *completion of the criminal investigation.*

18 *(d) The department shall not give a licensee advance notice of*
19 *an investigation conducted pursuant to this section. The substance*
20 *of the complaint shall be provided to the licensee no earlier than*
21 *at the time of the onsite investigation. Unless the complainant*
22 *specifically requests that his or her own name is released, neither*
23 *the substance of the complaint provided to the licensee, nor any*
24 *copy of the complaint or any record published, released, or*
25 *otherwise made available to the licensee shall disclose the name*
26 *of the complainant.*

27 *(e) It is the intent of the Legislature that the department shall*
28 *conduct investigations under this section in the manner required*
29 *to ensure maximum effectiveness while respecting the rights of*
30 *residents.*

31 *(f) A licensee, or officer or employee of the licensee, shall not*
32 *interfere with or obstruct an investigation conducted pursuant to*
33 *this section. The department shall assess an immediate civil penalty*
34 *of one thousand dollars (\$1,000) per day per violation for*
35 *violations of this subdivision. In addition to assessing that penalty,*
36 *the department may take any other enforcement actions authorized*
37 *by this chapter for violations of this subdivision.*

38 *(g) When conducting an onsite investigation pursuant to this*
39 *section, the department shall interview any residents who are the*
40 *subject of the complaint. Additionally, the officer, employee, or*

1 agent of the department conducting the investigation shall collect
2 and evaluate all available evidence necessary to complete the
3 investigation, including, but not limited to, the following:

4 (1) Observed conditions.

5 (2) Statements of witnesses.

6 (3) Interviews with administration, staff, other residents, family
7 members, visitors, the long-term care ombudsman, and other
8 individuals or agencies that provide services at the facility who
9 may have information about the complaint.

10 (4) Records from the facility and any other relevant sources.

11 (h) (1) The department shall complete its investigation within
12 90 days of receiving the complaint. Investigation of a complaint
13 alleging physical abuse, sexual abuse, or a threat of imminent
14 danger of death or serious harm shall be completed within 30 days
15 of receiving the complaint.

16 (2) The 30-day and 90-day deadlines in paragraph (1) may be
17 extended for an additional 30 days if the department has diligently
18 attempted, but has not been able, to obtain necessary evidence
19 related to the investigation. Whenever the department exercises
20 this authority, it shall notify the complainant in writing of the basis
21 for the extension, and shall include in the notice any outstanding
22 evidence, the sources from which the evidence has been sought,
23 and the anticipated completion date.

24 (3) Nothing in this section shall be interpreted to diminish the
25 department's authority and obligation to investigate and enforce
26 an alleged violation of state laws or regulations or any alleged
27 facts that might constitute such a violation.

28 (i) Within 10 days of completing the investigation of a complaint
29 under this section, the department shall notify the complainant in
30 writing of the department's determination as a result of the
31 investigation and of the complainant's right to appeal the findings.
32 The written notice shall describe the appeal process provided for
33 under subdivision (j) and include a copy of any reports and
34 documents describing violations and enforcement actions resulting
35 from the investigation.

36 (j) (1) A complainant who is dissatisfied with the department's
37 investigation, findings, or enforcement actions resulting from the
38 investigation may file an appeal by notifying the program manager
39 of the officer, employee, or agent of the department conducting
40 the investigation in writing within 15 days after receiving the notice

1 *described in subdivision (i). The program manager shall schedule*
2 *a meeting or teleconference with the complainant within 30 days*
3 *of receiving an appeal. The program manager shall carefully*
4 *review the concerns, information, and evidence presented by the*
5 *complainant to determine whether the department's findings or*
6 *actions should be modified or whether further investigation is*
7 *necessary. Within 10 days after conducting the meeting or*
8 *teleconference with the complainant, the program manager shall*
9 *notify the complainant in writing of the department's*
10 *determinations and actions concerning the appeal and of the*
11 *appeal rights provided in paragraph (2).*

12 *(2) If a complainant is dissatisfied with the program manager's*
13 *determination on an appeal, the complainant may, within 15 days*
14 *after receipt of this determination, file an appeal in writing with*
15 *the department's Deputy Director of the Community Care*
16 *Licensing Division. Within 30 days of receiving an appeal, the*
17 *deputy director or his or her designee shall interview the*
18 *complainant, consider any information presented or submitted by*
19 *the complainant, and review the complaint record to determine*
20 *whether the department's findings or actions should be modified*
21 *or whether further investigation is necessary. No later than 10*
22 *days after completing this review, the deputy director shall notify*
23 *the complainant in writing of the department's determinations and*
24 *actions concerning the appeal.*

25 *(3) A complainant may be assisted or represented by any person*
26 *of his or her choice in the appeal process described in this*
27 *subdivision.*

28 *(k) This section shall become operative on July 1, 2015.*

29 ~~SECTION 1. Section 1569.35 of the Health and Safety Code~~
30 ~~is amended to read:~~

31 ~~1569.35. (a) A person may request an investigation of a~~
32 ~~residential care facility for the elderly in accordance with this~~
33 ~~chapter by making a complaint to the department alleging a~~
34 ~~violation of applicable requirements prescribed by statutes or~~
35 ~~regulations of this state. A complaint may be made either orally,~~
36 ~~in writing, or electronically.~~

37 ~~(b) (1) Upon receipt of a complaint, the department shall make~~
38 ~~a preliminary review. Within two working days of receiving the~~
39 ~~complaint, the department shall notify the complainant of the name~~
40 ~~of the officer, employee, or agent of the department who will~~

1 conduct the investigation. Unless the department determines that
2 the complaint is willfully intended to harass a licensee or is without
3 any reasonable basis, it shall make an onsite investigation within
4 10 days after receiving the complaint.

5 (2) Notwithstanding paragraph (1), if a complaint alleges abuse,
6 neglect, or a threat of imminent danger of death or serious harm,
7 the department shall conduct an onsite investigation within 24
8 hours of the receipt of the complaint.

9 (3) Notwithstanding paragraph (1), if a local long-term care
10 ombudsman or the State Long-Term Care Ombudsman files a
11 complaint alleging denial of a statutory right of access to a
12 residential care facility for the elderly under Section 9722 of the
13 Welfare and Institutions Code, the department shall give priority
14 to the complaint, as required pursuant to Section 9721 of the
15 Welfare and Institutions Code, and confer with the Office of the
16 State Long-Term Care Ombudsman in the investigation.

17 (4) Prior to conducting an onsite investigation pursuant to this
18 section, the officer, employee, or agent of the department who will
19 conduct the investigation shall contact and interview the
20 complainant and inform the complainant of the department's
21 proposed course of action.

22 (e) The department shall coordinate its investigation of a
23 residential care facility for the elderly under this section with the
24 investigation of the facility by other agencies, including, but not
25 limited to, the Office of the State Long-Term Care Ombudsman
26 and law enforcement agencies. Nothing in this subdivision shall
27 be construed to limit the department's ability to temporarily
28 suspend an investigation if requested to do so by a law enforcement
29 agency because the investigation would adversely affect an active
30 criminal investigation. The department shall maintain written
31 documentation of the law enforcement request and continue to
32 ensure the safety of all residents. The department shall immediately
33 resume any investigation that is suspended pursuant to this
34 subdivision upon consent of law enforcement or completion of the
35 criminal investigation.

36 (d) The department shall not give a licensee advance notice of
37 an investigation conducted pursuant to this section. The substance
38 of the complaint shall be provided to the licensee no earlier than
39 at the time of the onsite investigation. Unless the complainant
40 specifically requests that his or her own name is released, neither

1 the substance of the complaint provided to the licensee, nor any
2 copy of the complaint or any record published, released, or
3 otherwise made available to the licensee shall disclose the name
4 of the complainant, except the name of a duly authorized officer,
5 employee, or agent of the department conducting the investigation
6 pursuant to this chapter.

7 (e) The department shall conduct investigations under this
8 section in the manner required to ensure maximum effectiveness
9 while respecting the rights of residents.

10 (f) A licensee, or officer or employee of the licensee, shall not
11 interfere with or obstruct an investigation conducted pursuant to
12 this section. The department shall assess an immediate civil penalty
13 of one thousand dollars (\$1,000) per day per violation for violations
14 of this subdivision. In addition to assessing that penalty, the
15 department may take any other enforcement actions authorized by
16 this chapter for violations of this subdivision.

17 (g) When conducting an onsite investigation pursuant to this
18 section, the department shall interview any residents who are the
19 subject of the complaint. Additionally, the officer, employee, or
20 agent of the department conducting the investigation shall collect
21 and evaluate all available evidence, including, but not limited to,
22 all of the following:

23 (1) Observed conditions.

24 (2) Statements of witnesses.

25 (3) Interviews with administration, staff, other residents, family
26 members, visitors, the long-term care ombudsman, and other
27 individuals or agencies that provide services at the facility who
28 may have information about the complaint.

29 (4) Records from the facility and any other relevant sources.

30 (h) The department shall complete its investigation within 90
31 days of receiving the complaint. Investigation of a complaint
32 alleging abuse, neglect, or a threat of imminent danger of death or
33 serious harm shall be completed within 30 days of receiving the
34 complaint. In cases in which the department has temporarily
35 suspended an investigation pursuant to subdivision (e), the
36 department may extend the investigation beyond the 90-day
37 requirement and shall notify the complainant within 48 hours that
38 the investigation has been temporarily suspended and why it has
39 been temporarily suspended, and provide an estimate of when the
40 investigation will be completed.

1 (i) Within 10 days of completing the investigation of a complaint
2 under this section, the department shall notify the complainant in
3 writing of the department's determination as a result of the
4 investigation and of the complainant's right to appeal the findings.
5 The written notice shall describe the appeal process provided for
6 under subdivision (j) and include a copy of any reports and
7 documents describing violations and enforcement actions resulting
8 from the investigation.

9 (j) (1) A complainant who is dissatisfied with the department's
10 investigation, findings, or enforcement actions resulting from the
11 investigation may file an appeal by notifying the program manager
12 of the officer, employee, or agent of the department conducting
13 the investigation in writing within 15 days after receiving the notice
14 described in subdivision (i). The program manager shall schedule
15 a meeting or teleconference with the complainant within 30 days
16 of receiving an appeal. The program manager shall carefully review
17 the concerns, information, and evidence presented by the
18 complainant to determine whether the department's findings or
19 actions should be modified or whether further investigation is
20 necessary. Within 10 days after conducting the meeting or
21 teleconference with the complainant, the program manager shall
22 notify the complainant in writing of the department's
23 determinations and actions concerning the appeal and of the appeal
24 rights provided in paragraph (2).

25 (2) If a complainant is dissatisfied with the program manager's
26 determination on an appeal, the complainant may, within 15 days
27 after receipt of this determination, file an appeal in writing with
28 the department's Deputy Director of the Community Care
29 Licensing Division. Within 30 days of receiving an appeal, the
30 deputy director or his or her designee shall interview the
31 complainant, consider any information presented or submitted by
32 the complainant, and review the complaint record to determine
33 whether the department's findings or actions should be modified
34 or whether further investigation is necessary. No later than 10 days
35 after completing this review, the deputy director shall notify the
36 complainant in writing of the department's determinations and
37 actions concerning the appeal.

38 (3) A complainant may be assisted or represented by any person
39 of his or her choice in the appeal process described in this
40 subdivision.

1 ~~SEC. 2.~~

2 SEC. 3. Section 1569.37 of the Health and Safety Code is
3 amended to read:

4 1569.37. (a) No licensee, or officer or employee of the licensee,
5 shall discriminate or retaliate in any manner, including, but not
6 limited to, eviction or threat of eviction, against any person
7 receiving the services of the licensee's residential care facility for
8 the elderly, or against any employee of the licensee's facility, on
9 the basis, or for the reason that, the person or employee or any
10 other person has initiated or participated in the filing of a
11 complaint, grievance, or a request for investigation with the
12 department pursuant to this chapter, or has initiated or participated
13 in the filing of a complaint, grievance, or request for investigation
14 with the appropriate local ombudsman, or with the state
15 ombudsman recognized pursuant to Chapter 11 (commencing with
16 Section 9700) of Division 8.5 of the Welfare and Institutions Code.

17 (b) ~~The department shall ensure that a licensee or officer or~~
18 ~~employee of the licensee complies with subdivision (a).~~ *assess an*
19 *immediate civil penalty in the amount of one thousand dollars*
20 *(\$1,000) per day for each violation of this section. In addition to*
21 *assessing that penalty, the department may take any other*
22 *enforcement actions authorized by this chapter for violations of*
23 *this section.*

24 ~~SEC. 3.~~

25 SEC. 4. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.